

**IN THE SUPREME COURT OF MISSISSIPPI**

**NO. 2018-CT-01045-SCT**

***BRIAN CARVER***

**v.**

***PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
OF MISSISSIPPI***

**ON WRIT OF CERTIORARI**

DATE OF JUDGMENT:	07/03/2018
TRIAL JUDGE:	HON. JEFF WEILL, SR.
TRIAL COURT ATTORNEYS:	JANE L. MAPP GEORGE S. LUTER
COURT FROM WHICH APPEALED:	HINDS COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	GEORGE S. LUTER
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: S. MARTIN MILLETTE, III
NATURE OF THE CASE:	CIVIL - STATE BOARDS AND AGENCIES
DISPOSITION:	AFFIRMED - 12/10/2020
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

**EN BANC.**

**COLEMAN, JUSTICE, FOR THE COURT:**

¶1. On December 14, 2011, Brian Carver applied for non-duty-related and duty-related disability benefits due to his suffering from post-traumatic stress disorder. The Public Employees' Retirement System of Mississippi "granted [Carver] non-duty related disability benefits but denied his request for duty-related disability benefits." *Carver v. Pub. Emps.' Ret. Sys. of Miss.*, No. 2018-SA-01045-COA, 2019 WL 5558650, at \*2 (Miss. Ct. App. Oct.

29, 2019). The denial by PERS was affirmed by the Disability Appeals Committee, the PERS Board of Trustees, the Hinds County Circuit Court, and the Court of Appeals. *Id.* at \*1, \*2. The Court of Appeals determined that “[a] plain-language reading of [Mississippi Code Section 25-11-114(7)(b) clearly distinguishes mental and physical disabilities.” *Id.* at \*4. We granted Carver’s petition for writ of *certiorari*.

### **FACTS AND PROCEDURAL HISTORY**

¶2. Brian Carver was employed by the Jackson Police Department as a patrolman for twenty years. In 2004, Carver was involved in an officer-involved shooting in which he shot and killed a suspect. *Carver*, 2019 WL 5558650, at \*1. After his two required visits to a psychologist, Dr. Jerry Alford, Carver was cleared to return to work. *Id.* Upon his return to work, he experienced physical-health and mental health-issues while on duty.

¶3. Carver testified that the first time he experienced post-traumatic stress disorder symptoms after returning to work, he had been dispatched on a domestic-violence call. During the incident, he became “highly anxious” due to the “yelling and screaming” coming from the house. *Id.* (internal quotation marks omitted). In response, “Carver drew his weapon and kicked in the door[,]” which caused the door to hit a child standing on the other side. *Id.* (internal quotation marks omitted). Carver stated that he “froze” and “that he could not move or enter the house[,]” forcing his fellow officers to take charge of the situation. *Id.* (internal quotation marks omitted). Carver explained that the behavior was triggered mainly by domestic violence situations and that he no longer could handle domestic-violence duty as a policeman. In some instances, Carver would wait until other officers had arrived on the

scene and would let them handle matters. *Id.* He testified that the domestic violence situations would cause flashbacks of the 2004 shooting and overwhelm him.

¶4. In 2007, the Department transferred Carver to the police-motor unit, which dealt mostly with traffic-related matters. *Id.* Even though Carver no longer dealt with domestic-violence disturbances, he continued to experience physical-health and mental-health issues when carrying out his official duties. He testified that in instances in which people failed to stop right away, he would become anxious and would feel as if he were still in a position that would require him to use deadly force. In April 2011, during a traffic stop, Carver acted inappropriately by getting into a verbal altercation with a motorist and then handcuffing the person. Along with his crippling anxiety, “Carver was fighting insomnia by periodically taking prescription medication.” *Id.*

¶5. In November 2011, Carver began seeing Dr. Kristen Matheny, a licensed professional counselor, for help with his anxiety and his inability not to overreact during routine policing situations. In December 2011, while on patrol during a Christmas parade, Carver involved himself in an altercation with a driver. The dispute was over the driver’s not wearing a seat belt and refusing to listen to Carver. In response to the driver’s noncompliance, Carver jerked the door open and tried to put the moving car into park in an effort to get the driver to stop. After that incident, Carver told Dr. Matheny that he felt that he was having trouble controlling his actions and that he was concerned “he might use his weapon inappropriately.” *Id.* “[W]ith his permission, the counselor informed Carver’s supervisors about the situation.” *Id.* “JPD relieved him of his gun, and he took a medical leave of absence.” *Id.* at \*2. Later,

Dr. Matheny wrote a letter in which she stated in her professional opinion that Carver “suffers from Post-Traumatic Stress Disorder (PTSD), and that the impulses he describes are a manifestation of his PTSD.”

¶6. On December 14, 2011, Carver underwent an independent medical evaluation that was performed by Dr. Mark Webb, a psychiatrist, “who stated that all of the above-mentioned traumas and incidents caused his PTSD.” *Id.* On December 31, 2011, Carver “received two letters terminating his employment.” *Id.*

¶7. Before being terminated, Carver “applied for non-duty and duty-related disability benefits.” *Id.* On January 31, 2012, the PERS Medical Board granted Carver’s claim for non-duty-related disability benefits and denied his claim for duty-related disability benefits, stating that

your claim did not meet the statutory definition for duty-related disability. PERS law requires that the disability for which duty-related disability benefits are claimed be the direct result of a physical injury from an accident or traumatic event occurring in the line of performance of duty. The law provides that cardiovascular, pulmonary, or musculoskeletal conditions that are not a direct result of a traumatic event occurring in the performance of duty shall be deemed an ordinary disability.

¶8. Carver appealed his denied claim to the Disability Appeals Committee. *Id.* On June 15, 2012, the Committee held a hearing, determined that “there is insufficient evidence that Mr. Carver sustained a physical injury as required by the statute,” and recommended to the PERS Board that Carver’s claim be denied. The Committee explained in relevant part:

While this Committee does not refute Mr. Carver’s diagnosis of PTSD, there is no evidence that the shooting caused actual “physical injury” to Mr. Carver, but rather the incident resulted in PTSD which then manifested with certain physical symptoms such as insomnia and anxiety. Mr. Carver’s attorney

deposed Dr. Webb in an attempt to establish a physical injury. Dr. Webb testified that Mr. Carver suffered an emotional or mental injury, and that he now suffers from a permanent mental illness called post traumatic stress disorder. Dr. Webb said this mental illness is also a “physical illness” as there are physiological symptoms that result from the psychological condition. In Mr. Carver’s case, the physical symptoms included difficulty with sleeping, concentration, and fear. In other words, mental illness can have a physical response. Dr. Webb, when lead, characterized PTSD as a “physical injury,” but his overall testimony clearly indicated he was referring to the physical symptoms associated with a mental illness, not an actual acute physical injury caused by an outside force.

....

This Committee understands that Mr. Carver fatally shot a suspect, and as a result, has suffered emotional problems, but the firing of his weapon caused him no direct physical injury. He did not suffer a bruise or broken bone, and the bullet did not ricochet and strike him in the head. He may argue that the injury was the chemical change in his brain which the doctor can see with an MRA, but the shooting itself did not cause these changes. Mr. Carver’s emotional and psychological response to the incident did.

¶9. “The PERS Board adopted the DAC’s findings and recommendations.” *Id.* On September 14, 2012, Carver appealed to the Circuit Court of the First Judicial District of Hinds County. The circuit court affirmed the PERS Board’s decision to deny Carver’s claim for duty-related disability benefits because Carver’s post-traumatic stress disorder did not satisfy the statutory definition and his post-traumatic stress disorder “stemmed from multiple traumas and lack of mental health treatment.” Carver appealed the circuit court’s judgment. The Court of Appeals affirmed, agreeing with “the PERS Board’s determination that PTSD is not a physical injury[,]” “that there was substantial evidence to support a denial of Carver’s duty-related disability benefits, and [that] the decision was neither arbitrary nor capricious.” *Id.* at \*4, \*5.

¶10. Carver timely petitioned for a writ of certiorari, arguing that the Court of Appeals erred by finding that post-traumatic stress disorder was not a physical injury and by applying Mississippi Code Section 25-11-114(7)(b) (Rev. 2018).

### STANDARD OF REVIEW

¶11. “When this Court reviews an administrative agency’s decisions, the Court may not overturn the agency’s judgment unless the agency’s decision is not supported by substantial evidence, is arbitrary or capricious, is beyond the scope or power granted to the agency, or violates constitutional rights.” *Vaughn v. Pub. Emps.’ Ret. Sys.*, 182 So. 3d 433, 437 (Miss. 2015) (citing *Pub. Emps.’ Ret. Sys. v. Porter*, 763 So. 2d 845, 847-48 (Miss. 2000)). “This Court is not entitled to substitute its own judgment for that of PERS, and it is impermissible for a reviewing court to reweigh the facts of the case.” *Pub. Emps.’ Ret. Sys. v. Dishmon*, 17 So. 3d 87, 91 (Miss. 2009) (citing *Pub. Emps.’ Ret. Sys. v. Marquez*, 774 So. 2d 421, 425 (Miss. 2000)).

¶12. “[S]tatutory interpretation is a question of law subject to *de novo* review.” *Bd. of Supervisors of Clarke Cnty. v. BTH Quitman Hickory, LLC*, 255 So. 3d 1261, 1262 (Miss. 2018) (citing *Tellus Operating Grp., LLC v. Texas Petroleum Inv. Co.*, 105 So. 3d 274, 278 (Miss. 2012)). “This Court has held that ‘[s]tatutory interpretation is appropriate when a statute is ambiguous or silent on a specific issue.’” *HWCC-Tunica, Inc. v. Miss. Dep’t of Rev.*, 296 So. 3d 668, 673 (Miss. 2020) (alteration in original) (quoting *Lewis v. Hinds Cnty. Cir. Ct.*, 158 So. 3d 1117, 1120 (Miss. 2015)). “Where a statute is unambiguous, the Court must apply the statute according to its plain meaning, refraining from principles of statutory

construction.” *OXY USA, Inc. v. Miss. State Tax Comm’n*, 757 So. 2d 271, 274 (Miss. 2000) (citing *City of Natchez v. Sullivan*, 612 So. 2d 1087, 1089 (Miss. 1992)). “Only when a statute is unclear or ambiguous should we look beyond the language of the statute in determining the Legislature’s intent.” *Callahan v. Leake Cnty. Democratic Exec. Comm.*, 773 So. 2d 938, 940 (Miss. 2000) (citing *Kerr-McGee Chem. Corp. v. Buelow*, 670 So. 2d 12, 17 (Miss. 1996)).

## DISCUSSION

¶13. Carver argues that post-traumatic stress disorder is a physical illness because, based on Dr. Webb’s testimony, his physiological symptoms are both mental and physical symptoms. Carver argues also that the Court of Appeals’ reliance on Section 25-11-114(7)(b) is misplaced because Section 25-11-114(7)(b) “is designed to curtail mental disability based upon the absence of trauma—not a traumatic event such as the 2004 shooting by Carver.” In response, PERS contends that the Court of Appeals’ holding is correct because Carver’s claim fails to meet the statutory requirements for duty-related disability benefits.

### **I. The decision of the PERS Board was not arbitrary or capricious and was supported by substantial evidence.**

¶14. Mississippi Code Section 25-11-114(6) states:

any active member who becomes disabled as a direct result of an accident or traumatic event resulting in a *physical injury* occurring in the line of performance of duty, provided that the medical board or other designated governmental agency after a medical examination certifies that the member is mentally or physically incapacitated for the further performance of duty and the incapacity is likely to be permanent, may be retired . . . .

Miss. Code Ann. § 25-11-114(6) (Rev. 2010).

¶15. Black’s Law Dictionary’s definition of the term physical injury states, “[b]odily harm or hurt, excluding mental distress, fright, or emotional disturbance.” *Physical injury*, Black’s Law Dictionary (6th ed. 1990). The version of Section 25-11-114(6) in effect at the time Carver applied for benefits clearly states that a physical injury is required. The language of the statute required: (1) an accident or traumatic event, (2) a physical injury associated with that accident or traumatic event, and (3) that the accident and accompanying physical injury occurred in the line of duty.

¶16. Carver argues that Dr. Webb’s testimony establishes post-traumatic stress disorder as a physical injury because post-traumatic stress disorder triggers “many physiological changes in the body.” Carver further argues that post-traumatic stress disorder causes chemical changes to a person’s brain, which can produce physiological symptoms. While it is true that post-traumatic stress disorder can cause physiological changes to the brain and may manifest physiological symptoms, the accident or traumatic event that caused the disorder did not also cause a physical injury. The Disability Appeals Committee explained:

This Committee understands that Mr. Carver fatally shot a suspect, and as a result, has suffered emotional problems, but the firing of his weapon caused him no direct physical injury. He did not suffer a bruise or broken bone, and the bullet did not ricochet and strike him in the head. He may argue that the injury was the chemical change in his brain which the doctor can see with an MRA, but the shooting itself did not cause these changes. Mr. Carver’s emotional and psychological response to the incident did.

¶17. Accordingly, the administrative agency’s decision was not arbitrary or capricious, and it was based on substantial evidence.

## II. The Court of Appeals did not err in its analysis of *Trulove*.

¶18. Carver further argues that the Court of Appeals erred in its analysis of *Public Employees' Retirement System v. Trulove*, 954 So. 2d 501, 505 (Miss. Ct. App. 2007), a case in which the Court of Appeals found that PERS ignored the evidence of Trulove's expert testimony. However, in the case *sub judice*, the facts of the traumatic event or accident that led to the injury are not in dispute. The Disability Appeals Committee stated:

While this Committee does not refute Mr. Carver's diagnosis of PTSD, there is no evidence that the shooting caused actual "physical injury" to Mr. Carver, but rather the incident resulted in PTSD which then manifested with certain physical symptoms such as insomnia and anxiety.

¶19. The Committee further stated:

This Committee understands that Mr. Carver fatally shot a suspect, and as a result, has suffered emotional problems, but the firing of his weapon caused him no direct physical injury. *He did not suffer a bruise or broken bone, and the bullet did not ricochet and strike him in the head.* He may argue that the injury was the chemical change in his brain which the doctor can see with an MRA, but the shooting itself did not cause these changes. Mr. Carver's emotional and psychological response to the incident did.

(Emphasis added.)

¶20. PERS did not argue that Carver did not suffer from post-traumatic stress disorder or that the disorder did not lead to physiological symptoms. PERS simply found that there was no physical injury that occurred in the line of duty. Accordingly, the Court of Appeals did not err in its analysis of *Trulove*.

## III. The Court of Appeals did not err in its analysis of Mississippi Code Section 25-11-114(7)(b).

¶21. Finally, Carver argues that the Court of Appeals erred by finding that Mississippi Code Section 25-11-114(7)(b) “explicitly separates mental disabilities from physical disabilities and each disability’s corresponding benefit.” *Carver v. Pub. Emps.’ Ret. Sys. of Miss.*, No. 2018-SA-01045-COA, 2019 WL 5558650, at \*4 (Miss. Ct. App. Oct. 29, 2019). Carver’s argument has no merit. Regardless of the Court of Appeals’ finding that Section 25-11-114(7)(b) separates mental and physical disabilities, Section 25-11-114(6) requires a physical injury occurring in the line of duty because of an accident or traumatic event. Accordingly, the Court of Appeals did not err in its analysis of Section 25-11-114(7)(b).

### CONCLUSION

¶22. The plain language of Section 25-11-114(6) required, at the time Carver applied for benefits, a physical injury arising from an accident or traumatic event occurring in the line of duty. Post-traumatic stress disorder may cause physiological changes to the brain and manifest in physiological symptoms; however, no physical injury occurred in the line of duty in the case *sub judice*. The PERS Board’s decision was not arbitrary or capricious, and it was based on substantial evidence. Accordingly, the decisions of the PERS Board, the Hinds County Circuit Court, and the Court of Appeals are affirmed.

¶23. **AFFIRMED.**

**RANDOLPH, C.J., MAXWELL, BEAM AND CHAMBERLIN, JJ., CONCUR.  
KITCHENS, P.J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY  
KING, P.J., ISHEE AND GRIFFIS, JJ.**

**KITCHENS, PRESIDING JUSTICE, DISSENTING:**

¶24. Post-traumatic stress disorder (PTSD) satisfies the physical-injury requirement of Mississippi Code Section 25-11-114(6) because it physically changes the brain and causes physical manifestations of behavior. *See* Miss. Code § 25-11-114(6) (Rev. 2010). Carver provided substantial evidence that his physical and mental incapacity resulted directly from a traumatic event that occurred while he was in the course and scope of his employment as a municipal police officer. That event caused his PTSD, a physical injury to the brain. Therefore, I respectfully dissent and I would find that Carver is entitled to duty-related disability benefits.

¶25. The question before this Court is whether PTSD satisfies the requirements necessary for a public employee to acquire duty-related disability benefits under Section 25-11-114(6). The majority finds that it does not because “[w]hile it is true that [PTSD] can cause physiological changes to the brain and may manifest physiological symptoms, the accident or traumatic event that caused the disorder did not also cause a physical injury.” Maj. Op. ¶ 16. But the majority disregards Dr. Mark Webb’s uncontradicted testimony. Dr. Webb was the only medical expert who testified at the PERS hearing. Considering the entirety of Dr. Webb’s testimony, it is clear that PTSD is more than mental distress or an emotional response and instead is both a mental illness and a physical illness. Dr. Webb testified without contradiction that PTSD causes physical changes to the brain, a part of the human body, and can cause a person to suffer physiological symptoms that are both mental and physical. Dr. Webb agreed that a mental illness is a physical illness and stated that “[PTSD] is a complex—symptom complex of many physiological changes in the body.” He said that

Carver suffers from the “physical injury of PTSD.” According to Dr. Webb, Carver’s PTSD progressed until ultimately it manifested itself physically by way of Carver’s irritability and impulsiveness. Carver’s PTSD physically affected his actions as a police officer by causing Carver not to respond immediately to distress calls, inappropriately handcuffing a motorist for failure to comply, physically freezing in ordinary police situations that he found stressful, and being terrified that he would use his weapon inappropriately. Additionally, Dr. Webb testified that doctors can utilize medical machines, such as an MRA, to scan a person’s brain and “see brain changes, brain differences in patients who are actively suffering from PTSD[.]” PTSD is a physical injury that causes observable chemical changes to the brain, a part of the human body, which can produce physiological symptoms. These chemical changes cause harm to the brain, undeniably a physical part of the human body. *See Means v. Baltimore Cnty.*, 689 A.2d 1238, 1243-44 (Md. 1997) (“We have come to appreciate that a mind may be injured as well as a body maimed.” (quoting *Belcher v. T. Rowe Price Found., Inc.*, 621 A.2d 872, 886 (Md. 1993))).

¶26. The majority defines physical injury as “[b]odily harm or hurt, excluding mental distress, fright, or emotional disturbance.” Maj. Op. ¶ 15 (internal quotation marks omitted) (quoting *Physical injury*, Black’s Law Dictionary (6th ed. 1990)). Dr. Webb’s testimony established that PTSD is a physical injury as contemplated by the statute. The brain is an integral part of the human body and PTSD changes its physical makeup and the way it functions. PTSD’s effect on Carver’s brain and behavior left him physically and mentally incapacitated and unable to perform his duties as a police officer. Thus, PTSD is not

excluded by the majority's definition because PTSD produces physical harm to the body and is more than "mental distress, fright, or emotional disturbances." Maj. Op. ¶ 15 (internal quotation mark omitted) (quoting *Physical injury*, Black's Law Dictionary (6th ed. 1990)). That PTSD constitutes a physical injury to the body was firmly established by the testimony of Dr. Webb. PERS adduced no testimony or other evidence to the contrary.

¶27. According to the PERS Board, if Carver had "suffer[ed] a bruise or a broken bone" or had the bullet ricocheted and struck Carver in the head, only then would he have been physically injured. Maj. Op. ¶¶ 8, 16, 19. That conclusory assertion is not supported by evidence. To compensate an employee for a broken bone and not for a brain injury because one injury is more *physically* observable than the other is illogical, and it is unjust. See *Belcher*, 621 A.2d at 887 ("[T]here is no really valid distinction between physical and 'nervous' injury. Certainly medical opinion would support this view, and insist that it is no longer realistic to draw a line between what is 'nervous' and what is 'physical.'" (quoting Arthur Larson, *The Law of Workmen's Compensation* § 42.23, at 7-906 (1992))); see also *Means*, 689 A.2d at 1243 ("Workers who suffer back pain or soft tissue injury as a result of accidents or diseases arising in the course of employment are not denied compensation due to the difficulty of verification."). Dr. Webb testified that the physical changes caused by PTSD can be seen on an MRA scan, which in effect is no different than looking at a broken bone with the aid of an X-ray. There is no difference between an officer who gets PTSD as a result of being shot in the leg than that of an officer who suffers PTSD because he killed a suspect. The PTSD affects both officers the same, i.e., physical changes in the chemistry

of their brains; but under the majority's reading of Section 25-11-114(6), only one of those officers would be eligible to receive duty-related disability benefits. In the real world of this case, this is an arbitrary distinction and amounts to a denial of equal justice under the law for Carver.

¶28. PTSD is a physical injury within the meaning of Section 25-11-114(6) because it affects the brain physically and can lead to disabling physical manifestations, as it did with Carver. Carver has presented substantial evidence in the form of Dr. Webb's uncontested testimony that this disabled officer is physically and mentally incapacitated as a result of the 2004 shooting. Therefore, I would find that Carver is entitled to duty-related disability benefits under Section 25-11-114(6).

**KING, P.J., ISHEE AND GRIFFIS, JJ., JOIN THIS OPINION.**